

Proposed Policy for Evaluation of Conservation Efforts When Making Listing Decisions

The Fish and Wildlife Service and the National Marine Fisheries Service (Services), announce a draft policy for the evaluation of conservation efforts when making listing decisions under the Endangered Species (Act). While the Act requires us to consider all conservation efforts being made to protect a species, the policy identifies criteria we will use in determining whether formalized conservation efforts contribute to making listing a species as threatened or endangered unnecessary. The policy applies to conservation efforts identified in conservation agreements, conservation plans, management plans or similar documents developed by Federal agencies, State and local governments, Tribal governments, foreign governments, businesses, organizations, and individuals.

What is the purpose of this policy?

We have proposed this policy in order to ensure consistent and adequate evaluation of formalized conservation efforts (conservation efforts identified in conservation agreements, conservation plans, management plans, and similar documents) when making listing decisions. We have also proposed this policy to facilitate the development of conservation efforts that sufficiently improve a species' status so as to make listing the species as threatened or endangered unnecessary.

Does the policy specify the level of conservation, or types of conservation, needed to make listing unnecessary?

No, the policy does not provide guidance for determining the level of conservation or the types of

conservation efforts needed to make listing unnecessary. Also, the policy does not provide guidance for determining when parties should enter into agreements or when a conservation effort should be included in an agreement or plan. *The policy provides guidance only for evaluating the certainty of implementation and effectiveness of formalized conservation efforts.* Although the certainty of implementation and effectiveness of a conservation effort may be considered in determining the appropriateness of including the effort in an agreement or plan, no particular level of certainty must be provided in order to include the effort in an agreement or plan.

What authority does the Service have to implement this policy?

Section 4(a)(1) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1533(a)(1)) states that we must determine whether a species is threatened or endangered because of any of the following five factors:

- (A) the present or threatened destruction, modification, or curtailment of its habitat or range;
- (B) overutilization for commercial, recreational, scientific, or educational purposes;
- (C) disease or predation;
- (D) the inadequacy of existing regulatory mechanisms; and
- (E) other natural or manmade factors affecting its continued existence.

Although this language focuses on impacts negatively affecting a species, section 4(b)(1)(A) requires us also to “tak[e] into account those efforts, if any, being made by any State or foreign nation, or any political subdivision of a State or foreign nation, to protect such species, whether by predator control, protection of habitat and food supply, or other conservation practices, within any area under its jurisdiction, or on the high seas.” Read together, sections 4(a)(1) and 4(b)(1)(A) and our regulations at 50 C.F.R. section 424.11(f) require us to consider any State, local, or foreign laws, regulations, ordinances, programs, or other specific conservation measures that either positively or negatively affect a species' status. The manner in which the section 4(a)(1) factors are framed supports this conclusion. Factor (D) for example—“the inadequacy of existing regulatory mechanisms”—indicates that we might find existing regulatory mechanisms adequate to justify a determination not to list a species.

In addition, we construe the analysis required under section 4(a)(1), in conjunction with the directive in section 4(b)(1)(A), to authorize and require us to consider whether the actions of any other entity, in addition to actions of State or foreign government, create, exacerbate, reduce, or remove threats to the species. Factor (E) in particular—any “manmade factors affecting [the species'] continued existence”—requires us to consider the pertinent laws, regulations, programs, and other specific actions of any entity that

either positively or negatively affect the species. Thus, the analysis outlined in section 4 requires us to consider any conservation efforts by State or local governments, foreign governments, Tribal governments, Federal agencies, businesses, organizations, or individuals that positively affect the species' status.

What are the criteria that a conservation effort must meet in order for the Service to determine that it might contribute to making listing unnecessary?

Conservation agreements, conservation plans, management plans, and similar documents generally identify numerous conservation efforts (i.e., actions, activities, or programs) to benefit the species. In determining whether a formalized conservation effort contributes to making listing a species as threatened or endangered unnecessary or contributes to forming a basis for listing as threatened rather than endangered, we must evaluate whether the conservation effort affects the status of the species.

Two factors are key in that evaluation: (1) For those efforts yet to be implemented, the certainty that the conservation effort will be *implemented* and (2) the certainty that the conservation effort will be *effective*. In order for us to determine that a formalized conservation effort contributes to making listing a species unnecessary or contributes to forming a basis for listing a species as threatened rather than endangered, the conservation effort must meet the following criteria:

A. The certainty that the conservation effort will be implemented:

- The conservation effort; the party(ies) to the agreement or plan that will implement the effort; and the staffing, funding level, funding source, and other resources necessary to implement the effort are identified.

- The authority of the party(ies) to the agreement or plan to implement the conservation effort, and the legal procedural requirements necessary to implement the effort, are described.

- Authorizations (e.g., permits, landowner permission) necessary to implement the conservation effort are identified, and a high level of certainty that the party(ies) to the agreement or plan that will implement the effort will

obtain these authorizations is provided.

- The level of voluntary participation (e.g., by private landowners) necessary to implement the conservation effort is identified, and a high level of certainty that the party(ies) to the agreement or plan that will implement the conservation effort will obtain that level of voluntary participation is provided (e.g., an explanation of why incentives to be provided are expected to result in the necessary level of voluntary participation).

- All regulatory mechanisms (e.g., laws, regulations, ordinances) necessary to implement the conservation effort are in place.

- A high level of certainty that the party(ies) to the agreement or plan that will implement the conservation effort will obtain the necessary funding is provided.

- An implementation schedule (including completion dates) for the conservation effort is provided.

- The conservation agreement or plan that includes the conservation effort is approved by all parties to the agreement or plan.

B. The certainty that the conservation effort will be effective:

- The nature and extent of threats being addressed by the conservation effort are described.

- Explicit objectives for the conservation effort and dates for achieving them are stated.

- The steps necessary to implement the conservation effort are identified.

- Quantifiable, scientifically valid parameters that will demonstrate achievement of objectives, and standards for these parameters by which progress will be measured, are identified.

- Provisions for monitoring and reporting progress in implementation (based on compliance with the implementation schedule) and effectiveness (based on evaluation of quantifiable parameters) of the conservation effort are provided.

- Principles of adaptive management are incorporated.

Whom should I contact about this policy?

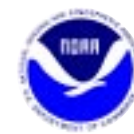
To provide comments or to obtain further information on the proposed policy, contact our Headquarters Office at the address below.

More information and office addresses can also be found by visiting the Fish & Wildlife Service website: (<http://www.fws.gov>).

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